



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 33 and 35**

**[Doc. No. AMS-FV-14-0099; FV15-33/35-1]**

**Regulations Issued under Authority of the Export Apple Act and Export Grapes and Plums; Changes to Export Reporting Requirements; Withdrawal**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a proposed rule to change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act and the Export Grape and Plum Act. After reviewing and considering the comments received, the agency has decided not to proceed with this action.

**DATES:** As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the proposed rule published on December 5, 2016, at 81 FR 87486, is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS,

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**SUPPLEMENTARY INFORMATION:** This withdrawal is issued under the Export Apple Act (7 U.S.C. 581-590) and the Export Grape and Plum Act (7 U.S.C. 591-599) (together hereinafter referred to as the "Export Fruit Acts"). The Export Fruit Acts promote foreign trade of fruit grown in the United States by authorizing the implementation of regulations related to quality, container markings, and inspection requirements. These regulations are contained in 7 CFR part 33 (Regulations Issued under the Export Apple Act) and 7 CFR part 35 (Export Grapes and Plums).

This action withdraws a proposed rule published in the *Federal Register* on December 5, 2016, (81 FR 87486) and reopened for further comment on January 23, 2017, (82 FR 7733) and February 23, 2017, (82 FR 11413) on changes to the reporting of export certificate information under regulations issued under the Export Fruit Acts. Specifically, the proposed rule would have required shippers of apples and grapes exported from the United States that are subject to inspection to enter the certificate number from inspection certificates (i.e.,

Export Form Certificates) into the Automated Export System (AES). For apples shipped to Canada in bulk containers, which are exempt from inspection requirements, shippers would have been required to enter a special exemption code defined by the Department of Agriculture (USDA) in lieu of entering an Export Form Certificate number. Shippers would also have been required to maintain paper or electronic copies of the certificates and to provide copies of the certificates to the Agricultural Marketing Service (AMS) upon request. AMS is responsible for monitoring apple and grape export shipments, and these proposed regulatory changes would help ensure that these shipments comply with inspection and certification requirements.

In addition, the proposed rule would have defined "shipper" and removed the requirement that carriers of exported apples and grapes retain certificates on file (because the requirement to retain the certificates would have shifted to shippers of exported apples and grapes).

It would have also removed regulations that are no longer applicable to grape exports and would have added structure and language to clarify the regulations.

Plums are not currently regulated under the Export Grape and Plum Act; therefore, this change would not have impacted shipments of plums exported from the United States.

During the proposed rule's initial 30-day comment period (December 5, 2016, through January 4, 2017), six comments were received. Two of those comments included requests to extend the comment period. To allow further public review of the proposed changes, USDA reopened the comment period for 60 days on January 23, 2017, and then further extended the comment period for an additional 30 days, through April 24, 2017. Four comments were received during the reopened comment period. Two comments were also received on May 1, 2017, one week after the close of the comment period (these two comments, which were in letter form, were dated before the end of the comment period: March 22, 2017, and April 10, 2017). All the comments may be viewed on the internet at <http://www.regulations.gov>. Of the twelve comments received, two requested an extension of the initial comment period (as noted above), five were in support, and five were opposed.

In summary, the five supporting comments were generally brief and in favor of the proposed changes. The opposing comments detailed concerns about the impact of the proposed changes on shippers, specifically, and the export industry, generally. Some commenters noted that the changes would result in a substantive increase in burden and costs to shippers without adding quality benefits, stating that this could lead to reduced efficiency and vitality of export operations. One commenter indicated that requiring a shipper to maintain the export certificates on file would be a duplication of recordkeeping, because those same certificates are maintained for five years by the commenter's state agricultural department. Another commenter noted that the changes would represent a major barrier to trade because of the complicated logistics of ocean shipments of exported apples and could cause economic harm.

Some commenters stated that the proposed rule did not contain quantifiable data that demonstrated non-compliance with the existing requirements, observing that shipments appear to have been properly inspected and certified for years without the proposed additional monitoring to ensure compliance with these requirements.

One commenter questioned using a special USDA-defined code in AES for exempt bulk shipments of apples to Canada because it appears to be a temporary workaround that would be used only until a new harmonized tariff code could be developed to identify these exempt shipments; the commenter suggested delaying the change until a permanent solution was developed in light of the non-urgent nature of the change. Some commenters also raised issues about the entry of information in AES, such as whether shipments bound for Canada require such entry and that it is a shipper's agent or freight forwarder—not a shipper—who enters data into AES. One commenter also recommended that the proposed "shipper" definition be more descriptive to provide further clarity in the regulations.

Given the opposing comments received, AMS has determined that the proposed rule changing the reporting requirements under the Export Fruit Acts should not be finalized. AMS intends to conduct outreach with export industry stakeholders and consider other compliance monitoring activities as it reconsiders whether changes will be proposed in the future. Accordingly, the proposed rule to change the reporting of export

certificate information under regulations issued pursuant to the Export Fruit Acts published in the *Federal Register* on December 5, 2016, (81 FR 87486) is hereby withdrawn.

**List of Subjects in 7 CFR Part 33**

Apples, Exports, Pears, Reporting and recordkeeping requirements.

**Authority:** 48 Stat. 124; 7 U.S.C. 581-590.

**List of Subjects in 7 CFR Part 35**

Administrative practice and procedure, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

**Authority:** 74 Stat. 734; 75 Stat. 220; 7 U.S.C. 591-599.

Dated: September 28, 2017.

**Bruce Summers,**

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*Agricultural Marketing Service.*

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